

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

KLEEN PRODUCTS LLC, et al.,	)	No. 10 C 5711
Plaintiffs,	)	Chicago, Illinois
	)	November 9, 2010
-vs-	)	10:15 o'clock a.m.
	)	
PACKAGING CORPORATION OF	)	
AMERICA, et al.	)	
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MILTON I. SHADUR

APPEARANCES:

For the Plaintiffs:      FREED KANNER LONDON & MILLEN LLC  
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Bannockburn Illinois 60015  
BY: MR. WILLIAM H. LONDON

For Plaintiff Thule:      MILLER LAW LLC  
115 South LaSalle Street  
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Chicago, Illinois 60603  
BY: MR. MARVIN A. MILLER

For the Defendant      KIRKLAND & ELLIS LLP  
Packaging Corporation      300 North LaSalle Street  
of America:      Chicago Illinois 60654  
BY: MR. DANIEL E. LAYTIN

Court Reporter:      ROSEMARY SCARPELLI  
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## 1 APPEARANCES: (Continued)

2 For Defendant GIBSON DUNN & CRUTCHER LLP  
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and  
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7 Chicago, Illinois 60604  
BY: MR. NATHAN P. EIMER

8 For Defendants K&L GATES LLP  
9 Cascades, Inc. and 70 West Madison Street  
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Chicago Illinois 60602  
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16 Chicago, Illinois 60603  
BY: MR. JAMES R. FIGLIULO

17 For Defendant MAYER BROWN LLP  
18 Temple-Inland: 71 South Wacker Drive  
Chicago, Illinois 60606  
19 MR. ANDREW S. MAROVITZ

20 For Defendant WINSTON & STRAWN LLP  
Smurfit-Stone: 35 West Wacker Drive  
Chicago, Illinois 60601  
21 BY: MR. R. MARK McCAREINS  
22 MR. JAMES F. HERBISON  
23  
24  
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1 THE CLERK: 10 C 5711, Kleen Products versus  
2 Packaging Corporation.

3 THE COURT: Sandy filled out -- figured out a way  
4 to fill up the courtroom I see. And I shudder to think of  
5 the hourly rates, so I am going to talk fast.

6 Anyway, would you identify yourselves maybe from  
7 our left to our right, so that -- so that we can get them  
8 right.

9 MR. NICOUD: Good morning, your Honor, Trey Nicoud  
10 on behalf of International Paper.

11 MR. EIMER: Good morning, your Honor, Nate Eimer on  
12 behalf of International Paper.

13 MR. FIGLIULO: Good morning, your Honor, Jim  
14 Figliulo on behalf of Georgia Pacific.

15 MR. LONDON: Good morning, your Honor, William  
16 London on behalf of the plaintiffs.

17 MR. MILLER: Good morning, your Honor, Marvin  
18 Miller on behalf of Thule, Inc.

19 MR. McCAREINS: Mark McCareins on behalf of  
20 Smurfit-Stone.

21 MR. MAROVITZ: Andy Marovitz on behalf of  
22 Temple-Inland.

23 MR. HERBISON: Jim Herbison on behalf of  
24 Smurfit-Stone.

25 MR. MENDEL: Scott Mendel on behalf of Cascades and

1 Norampac.

2 MS. DIVER: Jennifer Diver on behalf of  
3 Weyerhaeuser Company.

4 MR. LAYTIN: And good morning, Dan Laytin for  
5 defendant PCA.

6 THE COURT: Good morning. Well, as you know, this  
7 case was brought on by a motion, but I wanted to ask a  
8 preliminary question because of the notification that I have  
9 gotten in connection -- as all of us have gotten in  
10 connection with Smurfit-Stone, and that has to do with  
11 whether the stay that is involved as to them impacts on the  
12 ability to go forward with the other cases. I know that  
13 nobody else is entitled to a stay, but, on the other hand, I  
14 am always concerned about discovery that gets taken and may  
15 have to be redone because the party that is not involved  
16 might have other ideas about what ought to take place. And  
17 sometimes that is not -- that is not a cost efficient way to  
18 approach litigation. So maybe I ought to ask that of counsel  
19 for plaintiff in those terms.

20 MR. MILLER: Your Honor, on behalf of Thule we  
21 voluntarily dismissed, pursuant to Rule 41, the claims  
22 against Smurfit-Stone.

23 THE COURT: Okay. And that applies to all the  
24 cases that are before me?

25 MR. MILLER: No, that is just -- as a matter of

1 fact, yesterday there was a consolidated amended complaint  
2 that was filed.

3 THE COURT: Oh really.

4 MR. MILLER: I don't know if your Honor received  
5 it. I didn't file it.

6 THE COURT: I did not, because that was going to be  
7 my next question.

8 MR. MILLER: Right. And in that we also indicated  
9 on behalf of Thule that we had dismissed against  
10 Smurfit-Stone.

11 THE CLERK: Okay. Great. Thank you. There you  
12 go.

13 MR. MILLER: I don't believe that applies to the  
14 remaining plaintiffs in the other cases.

15 MR. LONDON: That is correct, your Honor.  
16 Smurfit-Stone is still listed.

17 THE COURT: Okay. So here is what we are going to  
18 do: First, because this is necessary in order to get Thule  
19 -- is that how you pronounce it, Thule?

20 MR. MILLER: Thule.

21 THE COURT: Yeah -- into the case I am granting  
22 that motion for reassignment on relatedness grounds. Okay.  
23 So then all the cases come before me.

24 The second thing is that with the consolidated and  
25 amended complaint having been tendered as had been promised

1 previously, I gather that the thing to do with respect to the  
2 other constituent cases is to dismiss them without prejudice,  
3 unless there is something about the consolidated complaint  
4 that says don't do that.

5 MR. LONDON: Well, we -- we tendered a consolidated  
6 complaint for the purpose of bringing everything into that  
7 one complaint, so I don't think we have any problem at all.

8 THE COURT: Could I -- could I move to strike that  
9 as nonresponsive? That gets -- that either gets a yes or a  
10 no answer I think.

11 MR. LONDON: Could you re-ask the question then.

12 THE COURT: The question is, do all the other cases  
13 get dismissed without prejudice, the other higher-numbered  
14 cases?

15 MR. LONDON: Yeah, everything should be now into  
16 the consolidated case.

17 THE COURT: Okay. So that is the second order of  
18 business.

19 Now, the next order of business has to do with the  
20 need on the part of the defendants to respond to the  
21 consolidated and amended complaint. And in that respect I  
22 don't know if you have had enough opportunity to take a look  
23 at it to see whether -- or what kind of time frame you may  
24 need for that purpose. And I should ask relatedly whether  
25 anybody anticipates, at least at this point, that the

1 responsive pleading may be a motion rather than an answer.  
2 So I guess I would like maybe each of the counsel for each of  
3 the defendants to respond. That way I can get a handle on  
4 setting a time for the response and also see whether I ought  
5 to have a two-part order, one for any motions attacking  
6 sufficiency of the complaint and another one for an answer,  
7 because the latter is something that may require, for  
8 example, more involvement internally in order to get the  
9 facts for the answer.

10 So why don't we go down the road, if we may.

11 MR. NICLOUD: Thank you, your Honor. Trey Nicoud  
12 for International Paper. We have had only a limited time to  
13 review the complaint. It came in late last night.

14 THE COURT: Yeah.

15 MR. NICLOUD: I do believe, your Honor, the  
16 defendants for a couple reasons would appreciate extending  
17 the time frame that we currently have. I do think there is  
18 some new allegations in the complaint. The class definition  
19 I believe has changed.

20 THE COURT: Yeah.

21 MR. NICLOUD: There is some additional plaintiffs  
22 and in addition -- and counsel for Smurfit-Stone can address  
23 this in greater detail -- we are -- we are all trying to  
24 assess what do we do with the status of Smurfit-Stone in  
25 light of the bankruptcy pleadings. Thule has dismissed

1 Smurfit-Stone. The other plaintiffs have not. They have  
2 said that they are limiting the claims. But I am just giving  
3 you a very, very -- what I gather from the very quick review  
4 of the amended complaint.

5 There are hearings scheduled before the Bankruptcy  
6 Court for later this month. I think the defendants -- and we  
7 have raised this with plaintiffs' counsel. They have  
8 indicated --

9 THE COURT: I know there are reasons. You don't  
10 have to detail them. Just give me a time, a date. Okay?

11 MR. NICOUD: Your Honor, what defendants thought  
12 would make sense, in light of proceedings in the Bankruptcy  
13 Court, is to leave on the calendar the status conference that  
14 you have set for December 13 and for the parties to appear  
15 before you then.

16 THE COURT: In other words, not to order anything  
17 now in terms of responsive pleading but see what the thing --  
18 how it has played out until the December 13th date?

19 MR. NICOUD: Yes, your Honor.

20 THE COURT: Is that true as to all the defendants?

21 MR. FIGLIULO: Yes, your Honor, George Pacific  
22 joins.

23 THE COURT: All except for Smurfit-Stone?

24 MR. McCAREINS: Well, I would even -- on behalf of  
25 Smurfit-Stone I would join in that too and to amend --



1 THE COURT: Okay.

2 MR. McCAREINS: We sent you a scheduling order from  
3 Judge Shannon. At plaintiffs' request that hearing date in  
4 Delaware has now been moved to November 22nd. So how quickly  
5 he will rule, I don't know. But hopefully by December 13th  
6 we will have some closure on those issues.

7 THE COURT: Okay. So the answer is then I will not  
8 not now set a schedule with respect to the responsive  
9 pleading. And I will, as indicated, see you at 9:00 o'clock  
10 I think it is -- right, 9:00 o'clock on December 13th. Okay?

11 MR. MILLER: I think, your Honor, there is a date  
12 already December 3rd for response --

13 THE COURT: I will vacate that --

14 MR. MILLER: -- that probably should be stricken.

15 THE COURT: -- obviously. That had to do with  
16 prior pleadings.

17 Okay, everybody? Thank you.

18 MR. McCAREINS: Thank you.

19 MR. FIGLIULO: Have a good day.

20 THE COURT: You too.

21 (Which were all the proceedings heard.)  
22  
23  
24  
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CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

s/Rosemary Scarpe11i/

Date: November 15th, 2010